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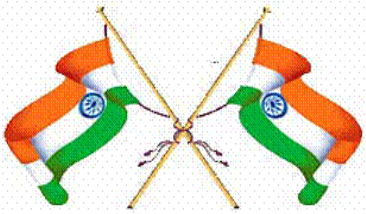
EDITOR'S NOTE

We have just celebrated the 63rd year of Indian independence on August 15th . In the past 62 years we have made substantial progress in all fields. But no amount of prosperity is either possible or worthwhile, if it is not accompanied by social infrastructure, one of which is a good legal system and an efficient dispute redressal mechanism, which provide the citizenry the assurance that they live under the protection of an efficient legal regime. IIAM is of the view that this alone can prevent mere economic power degenerating into a tyranny of wealth. The interest of IIAM is to propagate ideas and programs that substantially reduce, if not wholly eliminate, potential litigation. We look forward to your continued support and patronage in joining with us for creating a loving and caring world. Looking forward….



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"Transactional Analysis Matters"

The Potential Application of 'Transactional Analysis' to Mediation

: TONY WHATLING

Transactional Analysis, (TA), is a theory of personality, a theory of communication and of effective and non-effective communications, (or transactions), between people.

It can enable people to analyse and understand interpersonal communications and has potential for use particularly where differences occur between people in situations of close interdependent relationship, for example within families - what Eric Berne referred to as situations of 'Social Intercourse,' ['Games People Play' The Psychology of Human Relationships, 1964].

Originally I had taught TA in a counselling context within a social work course and more recently as a trainer in the field of management training, particularly in relation to helping managers improve performance and manage effective interpersonal communication in the work place. However it had been clear to me for some time that it also had a potentially important contribution to make to mediation, hence I started offering it as a CPD workshop.

The skilled mediator works to move people from a conflict discourse, typically characterised by win-lose 'naming', ' blaming', 'claiming', and 'positional' led accusations, towards 'needs-led', win-win communications

It can be said that mediation is essentially about facilitating constructive problem solving conversations between people in dispute. The skilled mediator works to move people from a conflict discourse, typically characterised by win-lose 'naming', 'blaming', 'claiming', and 'positional' led accusations, towards 'needs-led', win-win communications.

The first part of this joint effort then is for me to describe a brief over-view of the basic theory so as to set the basis for how it might be applied to mediation.

Ego States - A theory of personality.

Eric Berne proposed the classification of individual personality into three 'sub-personalities' or '**EGO STATES'**. He defined the ego state as '*a system of feelings accompanied by a related set of behaviour patterns' [Byrne 1964 Ch.1].*

He named these sub-personalities as our **Parent Adult and Child** ego states. These ego states are not related to our chronological age or maturity but simply ways our mind operates at different times; hence the ego-state is written with a capital letter. In other words the 'Child' means a state of mind not a young person - to say that someone is 'in their Child ego-state' is not to mean that they are being 'childish' in behaviour.

Children can have a well-developed 'Adult' and equally, grown-ups can have a very weak 'Parent' ego state. According to Byrne, we all operate in one or other of these states all of the time. It was once usefully described to me as being somewhat like our own personal computer, we each have three discs playing in our heads all of the time, with the playing needle moving from one to the other disc according to the people we are with and our mood at the time.

The Three Ego States:

The Parent - is what Berne described as a 'taught' state i.e. it represents behaviours, thoughts and feelings copied from our parents or other parent figures influential in our childhood.

The Parent ego-state sets limits - disciplines - judges - criticises - advises - guides - protects - nurtures and keeps traditions. It sets rules, or do's and don'ts, about how life should be. Its language can easily be recognised as it consists of such imperatives as 'should - shouldn't - ought-to - ought-not - always - never - don't - good - bad - right - wrong - and stop that at once' etc.

A person can have developed a Parent ego-state from the chronological age of two or three.

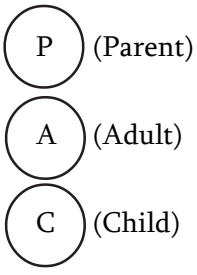
The Adult - described as our 'thought' state, refers to behaviours, thoughts and feelings that are direct responses to the 'here-and-now', whereby we work things out by looking at the facts before making decisions on action. The Adult state is largely unemotional; it is concerned with the what? How? Who? Where? When? - of the best ways to solve problems from a range of perspectives. The Adult determines best alternatives and estimates probabilities by gathering data from the *external* world, comparing it with *internal* messages from what the Child wants, what the Parent says, and compared against the Adults stored data on past decisions.

A person can have an Adult ego state from the age of two or three.

The Child - is described as our 'felt' state, i.e. our thoughts and feelings replayed from childhood, how we were as very young children. Someone in their Child ego-state will be fun loving - energetic - compliant - polite - creative - rebellious - seductive - intuitive - stubborn.

The Parent ego-state sets limits - disciplines - judges - criticises - advises - guides - protects - nurtures and keeps traditions. It sets rules, or do's and don'ts, about how life should be.

The states of Parent Adult and Child are usually abbreviated as PAC and presented as a 'first-order functional diagram of ego states' - i.e. the easiest way of describing them:



At a second level of analysis the ego states are divided further as follows:

Parent - a distinction is made between the **CRITICAL PARENT** [CP], sometimes referred to as 'controlling Parent'], and the **NURTURING PARENT [NP].**

The 'Critical Parent' - sets limits, disciplines, makes rules, judges and makes universal value statements that are frequently based on personal prejudices.

A typical mediation example might be a mother who responds to a fathers attempts to discuss renewing contact by saying 'it's your own fault that the children hate you for abandoning us in favour of your new partner, they tell me they never want to see you again and it's no more than you deserve'.

The Critical Parent can be sub-divided yet again into the '*Positive Critical Parent'*, who can be said to make rules so as to protect, or the '*Negative Critical Parent'* who oppresses or suppresses.

So a PCP mother in mediation might say 'I want the children to be able to see you but you will have to be reliable, it is too upsetting for them when they are ready and waiting at the window for hours and you don't turn up. A NCP however might say 'As far as I am concerned you having an affair with my best friend just proves you to be completely amoral and therefore I will never trust you to care for the children unless contact takes place in family home when I am there.

The 'Nurturing Parent' - takes care of, looks after, protects and loves.

Again however whilst this would describe a '*Positive Nurturing parent'*, a '*Negative Nurturing Parent'* would smother, over indulge, stifle and over-nurture.

Child - The child ego stage, which is very much in touch with its body, its feelings and emotions has two main facets, each of which can again be sub-divided:

The 'free', (or natural) Child is loving, spontaneous, carefree, fun loving, adventurous, curious, trusting and joyful. It can be quickly either very angry or happy and delighted. It is often referred to as the 'Little Professor', in that it 'knows' intuitively if people are trustworthy, (i.e. that when the parent left, they did come back again). It also asks questions such as what makes the sun rise and go away, or what are clouds made of? The little professor develops into an Adult but retains a quality of intuition and creativity.

The Child is often sub-divided again into 'The Adapted Child' and the 'Rebellious Child'

The Adapted Child - this represents the way in which the Child learned to get what are known as 'Strokes' from others; especially from Critical Parents. It is essentially compliant, responds to the expectations of authority figures so as to attract positive attention and reward. Some children learn that it pays to be stupid, confused, not to cry, always to say please and thank-you, not out of gratitude but out of fear.

The Rebellious Child - this one has learned that the only way to get attention is by producing an angry response, so the Child procrastinates, always arrives late, forgets things. A mediation context example of the RC might be the parent who persistently arrives late for the contact pick up and fails to bring the children home at the agreed time.

The Adult - The Adult is not usually sub-divided but is understood as any response to a here-and-now situation that utilises all our grown up resources.

Some typical words, behaviours and attitudes then that characterise these ego states are:

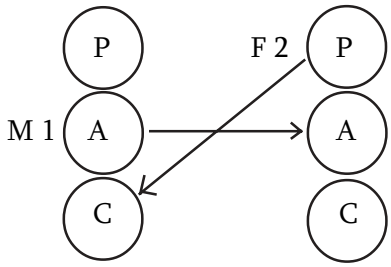
Ego State	Typical words/ phrases	Typical actions/ behaviour	Typical attitudes
CRITICAL PARENT	'Should' 'Ought' 'Disgraceful' 'Always' 'Never'	Finger wagging/ pointing Frowning	Judgmental Condescending Putting-down
NURTURING PARENT	'Let me help' 'Well done' 'Take care how you go"	Smiling Listening Attending Pat on the back	Caring Permitting Supporting
ADULT	What? How? Who? Where? When?	Relaxed Attentive	Open-minded Investigative Interested
ADAPTED CHILD	'Please can I?' 'I'll try' 'What should I do?' 'I'm ever so sorry'	Looks down Thumb-sucking Sad, Quiet	Agreeing with Asking permission Over compliance Helplessness
REBELLIOUS CHILD	'It's not fair' 'In a minute' 'I didn't say/do that' 'I didn't hear you'	Whining Frowning Inattentive Defiant Complaining Procrastinating	Surliness Put-upon 'People never give me enough time' Malicious Scoring points
FREE CHILD	'I want' 'It's wicked" 'Let's play' 'To the woods'	Laughing Shouting Anger Joy Uninhibited Energetic	Fun-loving Spontaneous
LITTLE PROFESSOR	'Why do ...?' 'Wow!' 'What is that for?'	Wide-eyed. Pointing. Investigating	Curiosity. Jumping about. Questioning everything

Mediators will doubtless recognise examples of these words, behaviours and attitudes from practice experience!

So how can we apply this knowledge as mediators?

The early stages of the joint mediation, tend to be characterised by two-way critical parent transactions, as each parent blames and counter blames the other for the predicament they find themselves unable to resolve. Whilst such exchanges are not very productive, they are described as 'complimentary transactions' i.e. they are on the same mutual level of exchange i.e. usually CP to CP. However, any attempt by one party to propose an Adult solution to the problem at this stage is typically blocked by what is called a 'cross-transaction' by the other. As an example of an Adult transaction a mother might say to a father, *[Transaction stimulus 1]*, 'O.K. then, if you are saying that picking the kids on Saturday mid-day makes the weekend too short, and I have trouble calming them down for bed when you bring

them back at 9pm on Sunday, how about if you pick them up directly from school on Friday and bring them back by tea time Sunday? An effective Adult response from the father might be [Transaction response 2], 'OK, but given what time I can get away from the office and how far it is to drive, I would worry about being at the school on time, so how do you feel about me collecting them from you at home'? If the mother chose to respond with something like *[transaction response 3],* 'OK I guess I could do that and it would also have the benefit of them being able to change out of their school clothes before you arrive', we would have an example of three 'parallel transactions' i.e. effective problem solving Adult -Adult communications. However, the father might respond to the *[stimulus 1]* transaction by saying something like, 'oh yes I can see what you are scheming at, that would mean you get to spend yet another night at the pub with your toy boy without worrying about the kids, I'm not being used by you as a cheap baby sitter', no way'. In this case we now have what is at the root of most miss-communications a 'crossed transaction' i.e.



whereby M's stimulus [M1] attempt to engage F by sending an Adult-to-Adult communication has brought a [F2] response from his Parent to her Child. The most likely consequence is a that she will respond with a further crossed transaction response, for example from her RC to his CP with something like 'Ok if that's the way you want to play it you can look after the kids full time and I will see them only if and when it suits me, see how you like it'.

Anyone who understands and uses TA will know that the best way for the mother to counteract his crossed response is to follow through with another Adult response, in the hope of pulling the father back into a parallel transaction. This strategy rarely works first time but by refusing to slip into the cross transactions tango, it makes it increasingly hard for the other to keep up the negative game.

In the heat of the above example of a mediation dispute the mother might understandably find this difficult to do. However, what hopefully happens next is that the mediator intervenes by initiating an Adult-Adult invitation. For example with something like 'sounds like you are both still wanting to get things right for the kids as parents but understandably its hard because you both still sound angry with each other as husband and wife, so how can you bring the kids back into focus here again and try to find a way to give them what they need, as well as give each of you a break sometimes. How about if I write up on the flip chart as many options as we can all think of, then we can play around with each idea in turn and check out the advantages and disadvantages for each of you and the kids'?

What we can also see here is that the mediators proposal not only contains the essential Adult - Adult quality of using the what? how? who? where? when? of problem-solving techniques, but also introduces an element of the positive NP, [in reminding them of the best interests of the children]. It also brings an element of the 'little professor - intuitive and creative Child' by introducing the flip chart with the notion of 'playing' with ideas.

A common misunderstanding of the theory of TA is that somehow Parent and Child states are bad and Adult is good. In reality, with human conflict in particular, a healthy mixture of Positive Nurturing Parent when combined with Adult plus Creative Child is the basis of the most constructive solutions.

Finally then it can be seen from the above that mediators can use this theory in understanding how different levels of transaction can be expected to occur at different stages in the mediation process. In stages 1-3 of the process, [Engaging, Identifying and Exploring the Issues], crossed transactions are normal and to be expected. However the transition to stages 4 and 5, [Option Development and Agreement], is unlikely to be productive unless the mediator initiates, models and encourages the move to complimentary transactions.

I hope that these ideas go some way to explaining the potential for applying the theory of TA to mediation, at least at a conceptual and understanding level. Lorraine's paper will help take this basis of understanding a stage further by proposing how potentially it could be applied more directly in practice.

(Author: Tony Whatling is a professional Mediator - Trainer - Professional Practice Consultant. TW Training Works' & 'Key Mediation Training & Consultancy')

The stupid neither forgive nor forget;
the naive forgive and forget;
the wise forgive but do not forget.
~Thomas Szasz~

ADR & Role of Institutional Arbitration

: K.L. VARGHESE

The immediate remedy seems to be resort to institutional arbitration. Institution should be requested to take up the job and courts should establish a view that the institutional arbitration forums who are well equipped and have well built mechanism and sufficient infrastructure with panel of arbitration from different subjects, should be asked to take up the task on short notice, bring the parties to the table, conduct adjudication process in an atmosphere of confidence, by competent persons of their choice from different fields who have proven ability, expertise and integrity so that at the end justice can be dispensed in a cost effective manner within the shortest time possible.

Towards the end of 1980's when cases pending in different courts of India crossed twenty five million and the need to get away from the traditional conception that court is the only place to settle disputes was severely felt, the Government of India constituted *Justice Malimath Committee*, which on the recommendations of the Chief Justices' Conference, made a number of recommendations in its Report submitted in 1990. In the meanwhile, the Law Commission of India had also submitted as many as 16 Reports containing recommendations on various aspects of the frightful problem of mounting arrears of cases in courts in India. It was widely acknowledged that irrespective of the number of courts that might be constituted and the number of judges that could be appointed, our justice system was not capable to take the entire litigation load. With a view to reducing the pressure on courts, as also to offering dispute resolution by bodies well informed in the areas falling in their respective jurisdictions, the *Constitution* made provision for the establishment of administrative tribunals at both the Central and State levels. The *Justice Malimath Committee* as also the *Law Commission* recommended a number of alternative modes such as 'arbitration, conciliation and mediation for dispute-resolution'.

On 4 December 1993, a meeting of the Chief Ministers and Chief Justices was held under the chairmanship of the Prime Minister of India to evolve a strategy for dealing with the congestion of cases in courts and other forums. The meeting adopted a resolution that sets forth ways and means to deal with the arrears problem as expeditiously as possible. While dealing with the arrears of cases in courts and tribunals, the resolution also recommended that a number of disputes could be led to settlement by alternative means such as arbitration, mediation and negotiation. The resolution further emphasized the desirability of disputants taking advantage of Alternative Dispute Resolution (ADR) which provided procedural flexibility, saved valuable time and money and avoided the stress of a conventional trial. ADR is seen as part of a system designed to meet the needs of consumers of justice, especially in the context of recent reforms in the economic sector.

Of course, ADR has been in vogue in India in the last one decade. However, it is only a fact that there has been no desired effort to arrest the mounting litigation loaded in courts because of poor application of this device or mechanism to resolve the disputes in order to reduce the litigation load; for what reason is yet to be explored.

This assumes significance when in other countries especially in America they have gone far ahead of us and even constituted DRBs (Dispute Review Boards). When ADR through arbitration and mediation is used for resolving disputes which have already arisen, DRB is constituted which has more of its application for preventing disputes particularly in construction industry. DRB visits the job site regularly during construction and is kept advised of progress, recommend settlement soon after the difference of opinion prop up before they transform into confrontation or litigation.

A glance through the reported case law in India may give an impression that even when courts in India encourage arbitration as an easy, less time consuming and inexpensive mechanism to resolve the disputes and controversies, still draws a line between the resolution of litigations by conventional civil proceedings in courts and by the arbitration. In that process, instead of promoting and encouraging litigants to resolve their disputes through arbitration, many a time there is a microscopic search and scanning to rule out arbitration, if possible. No wonder, even after introduction of Section 89 in the statute book, courts in India have not been able to make use of the mechanism effectively. Why this hesitation? – Who will answer?

CPC (Amendment) Act, 1999 by virtue of Clause 7 provided for settlement of disputes outside the court based on the recommendations made by Law Commission of India and Malimath Committee. The latter even recommended to make it *obligatory* for the court to refer the dispute, after issues are framed, for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat; however, making clear that when the parties fail to get their disputes settled through any of the alternate dispute resolution method that the suit could proceed further.

By the Amendment Act of 1999, when alternative modes of disputes redressal were reintroduced, the Statement of Objects and Reasons appended to the Bill made clear that with a view to implement the 129th Report of the Law Commission of India and to make conciliation scheme effective, it was proposed to make it obligatory for the court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat. Obviously, it must be with the good intention of helping the litigant to settle his dispute outside the court instead of going through the web of rules and elaborate process in court trial. On institution of the suit if the court feels that there exists element of settlement which may be acceptable to the parties, it may refer them to any of the forums mentioned above at any stage of the proceedings. To that end, the statute has introduced Order X by the Amendment Act, 1999. Rule 1A provides that after recording the admissions and denials, the court shall direct the parties to the suit to opt either mode of the settlement outside the court as specified in sub-section (1) of section 89 i.e. arbitration, conciliation, judicial settlement including settlement through Lok Adalath or mediation. On the option of the parties, the court shall fix the date of appearance before such forum or authority as may be opted by the parties. Though not expressly stated the right of the parties to request the Court to exercise its power under this provision cannot be ruled out. Where the suit is referred under rule 1A, it is obligatory on the parties to appear before such forum or authority for conciliation of the suit. If, however, for any reason the presiding officer of conciliation forum or authority is satisfied that it would not be proper in the interest of justice to proceed with the matter, under Rule 1C it shall refer the matter again back to the court and direct the parties to appear before the court on the date fixed by it. Thus, sufficient safeguards have been provided in the statute to keep safe the interests of the parties even if the mechanism of ADR is found abortive.

The Hon'ble Supreme Court in Salem Advocate Bar Association, Tamil Nadu, v. Union of India (AIR 2003 SC 189) has taken note of the introduction of section 89 of CPC. The court opined, "It is quite obvious that the reason why Section 89 has been inserted is to try and see that all the cases which are filled in Court need not necessarily be decided by the Court itself. Keeping in mind the laws delays and the limited number of Judges, which are available, it has now become imperative that resort should be had to Alternative Dispute Resolution Mechanism with a view to bring to an end litigation between the parties at an early date. The Alternative Dispute Resolution (ADR) Mechanism as contemplated by Section 89 is arbitration or conciliation or judicial settlement including settlement through Lok Adalat or mediation. Sub-section (2) of section 89 refers to different acts in relation to arbitration, conciliation or settlement through Lok Adalat, but with regard to mediation Section 89(2)(d) provides that the parties shall follow the procedure as may be prescribed. Section 89(2)(d), therefore, contemplates appropriate rules being framed with regard to mediation."

In para 10 of the decision in the apex court has noted, "In certain countries of the world where ADR has been successful to the extent that over 90 per cent of the cases are settled out of Court, there is a requirement that the parties to the suit must indicate the form of ADR which they would like to resort to during the pendency of the trial of the suit." The court has also observed that even though arbitration or conciliation has been in place as a mode for settling the disputes, that has not really reduced

the burden on the Courts in India and therefore modalities have to be formulated for the manner in which Section 89 and, of that matter, the other provisions which have been introduced by way of amendments, may have to be in operation. Interestingly, all counsel appearing in the cases agreed that it will be appropriate if a Committee is constituted so as to ensure that the amendments made become effective and result in quicker dispensation of justice. To that end, the Supreme Court constituted a Committee also. How far the Committee could act or achieve, is yet to come out.

Hon'ble Mr. Justice S.K. Agarwal, Judge, Delhi High Court, New Delhi, in his article, "Arbitration": an Option to Resolve under Section 89 of the Code of Civil Procedure" has himself asked the question "how would "arbitration", as a mode of dispute resolution would work in the context of S.89 of the Code? Learned Judge says, "No doubt, arbitration as the mode for settlement of disputes between the parties had been a tradition in this country, having a social purpose. Yet the mindset of average litigant is not attuned to opt for arbitration. The arbitration has an image synonymous with obstructions, astronomical costs and delays. The procedure is tedious and many times it takes years for final resolution of disputes. Once the person gets into it, he finds it difficult to come out of it. He gets exhausted financially and physically." How far this view is correct is a matter of debate. The author has also made few suggestions to be adopted so that the concept of arbitration which could be acceptable to the litigant public. They include preparation of panel of fully qualified persons of known integrity from the fields of law, engineering and medicines etc., ensuring party's freedom to select the persons of his choice from such panel, fixing the time limit to decide the matter in dispute, fixing venues with adequate infrastructure for conducting arbitration, reposing faith and confidence in the parties, attractive financial package to be offered to the arbitrators, cautioning the parties that one of the factors for awarding costs at the end of the trial in civil courts may be unjust refusal of the parties to opt for arbitration for resolution of the dispute. Article ends thus, " To ensure that the laudable object of S. 89 of the Code is achieved it is necessary that remedial steps are taken, to make arbitration "cost effective", "expeditious" and "simpler", to be accepted as the alternative dispute resolution methods for resolution of disputes. There is an urgent need for the same."

The question remains, who will bell the cat and how? The immediate remedy seems to be resort to institutional arbitration. Institution should be requested to take up the job and courts should establish a view that the institutional arbitration forums who are well equipped and have well built mechanism and sufficient infrastructure with panel of arbitration from different subjects, should be asked to take up the task on short notice, bring the parties to the table, conduct adjudication process in an atmosphere of confidence, by competent persons of their choice from different fields who have proven ability, expertise and integrity so that at the end justice can be dispensed in a cost effective manner within the shortest time possible. There are number of institutions conducting arbitration like IIAM, ICA, ICADR etc. IIAM with its Head Quarters at Bangalore is advised by eminent personalities like Mr. Justice M.N. Venkatachalaiah, former Chief Justice of India and the empanelled arbitrators include eminent and well informed personalities like Mr. V.S. Malimath, former Chief Justice, along with former judges of various High Courts and senior advocates, Consulting advisers on banking, journalists, medical practitioners, retired Chief Engineers and social workers in its key positions and number of eminent persons to take up the assignment of arbitration, mediation and conciliation. It is high time that the service of such institutions be availed without further delay rather than keeping S. 89 in CPC remain static, any more as if ornamental to the statute book.

(Author: K.L. Varghese is an Advocate practising in the High Court of Kerala, India)

The Lighter Side

On a wall in a ladies room...

"My husband follows me everywhere."

Written just below it...

"I do not."

Divorce Peacefully

: RORY COLTON GODOWSKY

When I first became a family lawyer, almost thirty years ago, the goal of many spouses was to fight until someone became so exhausted from the struggle that they gave in to the other person or allowed a judge to make a decision, leaving both parties lacking what they really wanted. Unfortunately, the system at that time did not encourage people to take control of their own destiny. Divorce was synonymous with war and no one came out feeling victorious. Litigation did not create a resolution and often the real victims were the children, the very people both parties were trying to protect.

Today, however, there are options to duking it out when a marriage is dissolving. The process known as mediation allows parties to work with a third party who is a neutral to sort out the details involved in the finalization of the matters. In this setting, the parties are able to explain to the mediator and the other party what their goals are and how they would like to proceed to work out the issues.

Mediation got started in the late 70's as a way to work out disputes and still maintain a relationship with the other party. Basically, any matter that is in dispute can be mediated in order to resolve the issues. The increasing trend in mediation is a combined result of people wanting to avoid the costs of litigation and the concern about maintaining an ongoing relationship. It should be noted that in most conflicts, the savings in using mediation as a remedy is not just money. People are able to work through their disputes and still maintain a relationship with the other party.

Most people who have been through the process are pleased because of the relationship they have been able to retain, and, in many instances, develop with their former spouse.

When the parties decide that they would like to pursue mediation there is an initial meeting scheduled. At that time the parties and the mediator have an informal discussion about the issues, and what, if anything, the parties have already agreed upon. After that initial meeting the parties fill out paperwork regarding their assets, debts, and income information for the next session.

There are a series of sessions held until all issues are resolved. Once the parties have finalized all matters, the mediator will prepare an agreement that becomes a contract between the parties. Most people who have been through the process are pleased because of the relationship they have been able to retain, and, in many instances, develop with their former spouse.

The mediator at all times remains a neutral party. In this capacity the mediator cannot give legal advice to either spouse. The mediator can, however, help the parties figure out options that would be beneficial in the agreement and guide them through the process, as well as helping them to learn to communicate about their differences rather than argue.

Although divorce mediation seems like a new process it is becoming more and more popular throughout the country. Most people prefer to resolve their differences amicably, despite what they may feel initially and are happy to be able to control the outcome of their future.

Mediation is a confidential process and nothing that is said at mediation can be used in a court proceeding.

The mediator cannot be called to court as a witness and generally will not speak to one spouse without the other spouse's knowledge. There are some instances, however, where the parties will be in two different rooms and the mediator will go back and forth to discuss the party's position. This may be at the request of one of the parties, or the premise of the mediator that an agreement will be more likely if the parties are in separate rooms.

(Author: Rory Godowsky has been practicing law in Delaware for almost 30 years. She is a graduate of Widener University School of Law and has been in private practice with an emphasis on Family Law and Personal Injury)

Interested to contribute Articles?

We would like to have your contributions, provided they are not published else where. Articles should be in English. Please take care that quotations, references and footnotes are accurate and complete. Submissions may be made to the Journals Division, Indian Institute of Arbitration & Mediation, PDR Bhavan, Second Floor, Foreshore Road, Cochin - 682 016 or editor@arbitrationindia.com.

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Think ...

There was once a king who offered a prize to the artist who could paint the best picture of peace. Many artists tried. The king looked at all the pictures, but there were only two that he really liked, and he had to choose between them.

One picture was of a calm lake. The lake was a perfect mirror for the peaceful towering mountains all around it. Overhead was a blue sky with fluffy white clouds. All who saw this picture thought that it was a perfect picture of peace.

The second picture had mountains, too. But these were rugged and bare. Above was an angry sky from which rain fell, and in which lightening played. Down the side of the mountain tumbled a foaming waterfall. This did not look peaceful at all.

But when the king looked, he saw behind the waterfall a tiny bush growing in a crack in the rock. In the bush a mother bird had built her nest.... a perfect picture of peace.

Which of the pictures won the prize? The king chose the second picture.

Do you know why?

"Because," explained the king, "peace does not mean to be in a place where there is no noise, trouble or hard work. Peace means to be in the midst of all those things and still be calm in your heart. That is the real meaning of peace."

That is the REAL meaning of peace.

Mediation Project during fiscal crisis

With a worldwide fiscal crisis in full swing and many New Yorkers more stressed than usual over lost jobs, pay cuts, and dwindling assets, the last thing the community needs is the additional expense and acrimony of a lawsuit—especially when both can often be avoided. To this end, the Association of the Bar of the City of New York (NYC Bar), established the "Co-op and Condo Mediation Project," a program designed to help shareholders, managing agents, boards of directors, and others settle residential disputes without drag-down, drawn-out court hearings. The service is available in situations where all parties to a dispute are prepared to seek mediation.

China's Supreme People's Court encourages mediation

China's Supreme People's Court issued a new regulation to encourage parties involved in conflicts to mediate for resolution. The regulation is in response to a rapid increase in lawsuits during the past two years. It clarifies transitional procedures for parties to cease actions in the people's courts and turn instead to industrial or community mediation.

The move is an attempt to bring social organizations into play at an action's early stage to ease public discontent and prevent aggravation of resentment and tension. It is in accord with the new objective of a harmonious society outlined by the Communist Party of China and the government.

Woman hit, bit Court Mediator

After a session of marital mediation in the district court's family division at Portsmouth, Elizabeth Loveday of Perkins Ave, Hampton, threatened to kill her estranged mate, then hit and bit the mediator. According to the Police, Loveday was exiting a courthouse meeting room when she shouted to her ex, "I will kill you." Shortly after, in a courthouse hallway, Loveday swung at, struck, then bit the mediator on her forearm.

The incident was captured on the court's video surveillance system. She is charged with two counts of simple assault, a criminal threatening charge and a count of violating a protective order.

WIPO to open Arbitration & Mediation Centre in Singapore

Singapore and WIPO signed an agreement to pave the way for the setting up of the Singapore Office of the WIPO Arbitration and Mediation Centre. As the only WIPO centre in the region, the Singapore office will also provide training and advice on procedures such as arbitration, mediation and expert determination, and will administer and facilitate hearings in cases conducted under the WIPO rules in Singapore.

'Judges should not take mediation lightly'

Chief Justice of Allahabad High Court, Chandramauli Kumar Prasad exhorted the judiciary not to use mediation to shed their workload but strive to understand the spirit behind it. Justice Prasad was addressing a gathering of lawyers, students and academicians at the Ram Manohar Lohia National Law University during a three-day training on mediation and conciliation. He said that the judges while referring the cases for mediation should not bring their self-interest into it.

An "award" cannot be construed as a "decree" under the Insolvency Act

In a recent judgment, the Madras High Court, held that though a Division Bench of the court had ruled that an arbitral award became enforceable as if it was a decree of the court on expiry of the time for making an application to set aside, the Supreme Court vide its judgment in Paramjeat Singh Patheja vs ICDS Ltd [reported in (2006) 13 SCC 322] rejected such a claim. A legal fiction, the apex court ruled, ought not to be extended beyond its legitimate field. As such, an award rendered under the Arbitration and Conciliation Act, 1996, could not be construed as a "decree" for the purpose of Section 9(2) of the Insolvency Act. An insolvency notice should be in strict compliance with the requirements of the Act and the rules made thereunder.

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You can bet that for any decision you make, some nontrivial number of people will think you're a complete idiot, no matter which option you choose.
~Ed Bott~